



SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

- 1 Page 37, between lines 10 and 11, begin a new paragraph and insert:
- 2 SECTION 31. IC 22-2-2-4, AS AMENDED BY P.L.165-2007,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2014]: Sec. 4. (a) Every employer employing four (4) or more
- 5 employees during a work week shall:
- 6 (1) in any work week beginning on or after July 1, 1968, in which
- 7 the employer is subject to the provisions of this chapter, pay each
- 8 of the employer's employees wages of not less than one dollar and
- 9 twenty-five cents (\$1.25) per hour;
- 10 (2) in any work week beginning on or after July 1, 1977, in which
- 11 the employer is subject to this chapter, pay each of the employer's
- 12 employees wages of not less than one dollar and fifty cents
- 13 (\$1.50) per hour;
- 14 (3) in any work week beginning on or after January 1, 1978, in
- 15 which the employer is subject to this chapter, pay each of the
- 16 employer's employees wages of not less than one dollar and
- 17 seventy-five cents (\$1.75) per hour; and
- 18 (4) in any work week beginning on or after January 1, 1979, in
- 19 which the employer is subject to this chapter, pay each of the
- 20 employer's employees wages of not less than two dollars (\$2) per
- 21 hour.
- 22 (b) Except as provided in subsection (c), every employer employing
- 23 at least two (2) employees during a work week shall, in any work week
- 24 in which the employer is subject to this chapter, pay each of the
- 25 employees in any work week beginning on and after July 1, 1990, and
- 26 before October 1, 1998, wages of not less than three dollars and

thirty-five cents (\$3.35) per hour.

(c) An employer subject to subsection (b) is permitted to apply a "tip credit" in determining the amount of cash wage paid to tipped employees. In determining the wage an employer is required to pay a tipped employee, the amount paid the employee by the employee's employer shall be an amount equal to:

(1) the cash wage paid the employee, which for purposes of the determination shall be not less than the cash wage required to be paid to employees covered under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20, 1996, which amount is two dollars and thirteen cents (\$2.13) an hour; and

(2) an additional amount on account of the tips received by the employee, which amount is equal to the difference between the wage specified in subdivision (1) and the wage in effect under subsections (b), (f), (g), ~~and~~ (h), **(i), (j), (k), (l), (m), and (n)**.

An employer is responsible for supporting the amount of tip credit taken through reported tips by the employees.

(d) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which employees are employed, between employees on the basis of sex by paying to employees in such establishment a rate less than the rate at which the employer pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

(1) a seniority system;

(2) a merit system;

(3) a system which measures earnings by quantity or quality of production; or

(4) a differential based on any other factor other than sex.

(e) An employer who is paying a wage rate differential in violation of subsection (d) shall not, in order to comply with subsection (d), reduce the wage rate of any employee, and no labor organization, or its agents, representing employees of an employer having employees subject to subsection (d) shall cause or attempt to cause such an employer to discriminate against an employee in violation of subsection (d).

(f) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after October 1, 1998, and before March 1, 1999, wages of not less than four dollars and twenty-five cents (\$4.25) per hour.

(g) Except as provided in subsections (c) and ~~(f)~~; **(p)**, every

1 employer employing at least two (2) employees during a work week
2 shall, in any work week in which the employer is subject to this
3 chapter, pay each of the employees in any work week beginning on or
4 after March 1, 1999, and before July 1, 2007, wages of not less than
5 five dollars and fifteen cents (\$5.15) an hour.

6 (h) Except as provided in subsections (c) and ~~(f)~~, **(p)**, every
7 employer employing at least two (2) employees during a work week
8 shall, in any work week in which the employer is subject to this
9 chapter, pay each of the employees in any work week beginning on or
10 after June 30, 2007, **and before July 1, 2016**, wages of not less than
11 the minimum wage payable under the federal Fair Labor Standards Act
12 of 1938, as amended (29 U.S.C. 201 et seq.).

13 **(i) Except as provided in subsections (c) and (p), every employer**
14 **employing at least two (2) employees during a work week shall, in**
15 **any work week in which the employer is subject to this chapter,**
16 **pay each of the employees in any work week beginning on or after**
17 **July 1, 2016, and before July 1, 2017, wages of not less than seven**
18 **dollars and seventy-five cents (\$7.75) an hour.**

19 **(j) Except as provided in subsections (c) and (p), every employer**
20 **employing at least two (2) employees during a work week shall, in**
21 **any work week in which the employer is subject to this chapter,**
22 **pay each of the employees in any work week beginning on or after**
23 **July 1, 2017, and before July 1, 2018, wages of not less than eight**
24 **dollars and twenty-five cents (\$8.25) an hour.**

25 **(k) Except as provided in subsections (c) and (p), every**
26 **employer employing at least two (2) employees during a work week**
27 **shall, in any work week in which the employer is subject to this**
28 **chapter, pay each of the employees in any work week beginning on**
29 **or after July 1, 2018, and before July 1, 2019, wages of not less than**
30 **eight dollars and seventy-five cents (\$8.75) an hour.**

31 **(l) Except as provided in subsections (c) and (p), every employer**
32 **employing at least two (2) employees during a work week shall, in**
33 **any work week in which the employer is subject to this chapter,**
34 **pay each of the employees in any work week beginning on or after**
35 **July 1, 2019, and before July 1, 2020, wages of not less than nine**
36 **dollars and twenty-five cents (\$9.25) an hour.**

37 **(m) Except as provided in subsections (c) and (p), every**
38 **employer employing at least two (2) employees during a work week**
39 **shall, in any work week in which the employer is subject to this**
40 **chapter, pay each of the employees in any work week beginning on**
41 **or after July 1, 2020, and before July 1, 2021, wages of not less than**
42 **nine dollars and seventy-five cents (\$9.75) an hour.**

43 **(n) Except as provided in subsections (c) and (p), every**
44 **employer employing at least two (2) employees during a work week**
45 **shall, in any work week in which the employer is subject to this**
46 **chapter, pay each of the employees in any work week beginning on**

1 **or after July 1, 2021, wages of not less than ten dollars (\$10) an**
 2 **hour.**

3 ~~(i)~~ **(o)** This section does not apply if an employee:

4 (1) provides companionship services to the aged and infirm (as
 5 defined in 29 CFR 552.6); and

6 (2) is employed by an employer or agency other than the family
 7 or household using the companionship services, as provided in 29
 8 CFR 552.109 (a).

9 ~~(j)~~ **(p)** This subsection applies only to an employee who has not
 10 attained the age of twenty (20) years. Instead of the rates prescribed by
 11 subsections (c), (f), (g), ~~and~~ (h), **(i), (j), (k), (l), (m), and (n)**, an
 12 employer may pay an employee of the employer, during the first ninety
 13 (90) consecutive calendar days after the employee is initially employed
 14 by the employer, a wage which is not less than:

15 (1) four dollars and twenty-five cents (\$4.25) per hour, effective
 16 March 1, 1999; and

17 (2) the amount payable under the federal Fair Labor Standards
 18 Act of 1938, as amended (29 U.S.C. 201 et seq.), during the first
 19 ninety (90) consecutive calendar days after initial employment to
 20 an employee who has not attained twenty (20) years of age,
 21 effective July 1, 2007.

22 However, no employer may take any action to displace employees
 23 (including partial displacements such as reduction in hours, wages, or
 24 employment benefits) for purposes of hiring individuals at the wage
 25 authorized in this subsection.

26 ~~(k)~~ **(q)** Except as otherwise provided in this section, no employer
 27 shall employ any employee for a work week longer than forty (40)
 28 hours unless the employee receives compensation for employment in
 29 excess of the hours above specified at a rate not less than one and
 30 one-half (1.5) times the regular rate at which the employee is
 31 employed.

32 ~~(r)~~ **(r)** For purposes of this section the following apply:

33 (1) "Overtime compensation" means the compensation required
 34 by subsection ~~(k)~~: **(q)**.

35 (2) "Compensatory time" and "compensatory time off" mean
 36 hours during which an employee is not working, which are not
 37 counted as hours worked during the applicable work week or
 38 other work period for purposes of overtime compensation, and for
 39 which the employee is compensated at the employee's regular
 40 rate.

41 (3) "Regular rate" means the rate at which an employee is
 42 employed is considered to include all remuneration for
 43 employment paid to, or on behalf of, the employee, but is not
 44 considered to include the following:

45 (A) Sums paid as gifts, payments in the nature of gifts made at
 46 Christmas time or on other special occasions, as a reward for

service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.

(B) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of the employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for the employee's hours of employment.

(C) Sums paid in recognition of services performed during a given period if:

(i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or work week because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ (q) or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the work week, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside

of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight (8) hours) or work week (not exceeding the maximum work week applicable to the employee under subsection ~~(k)~~ (q) where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or work week.

~~(m)~~ (s) No employer shall be considered to have violated subsection ~~(k)~~ (q) by employing any employee for a work week in excess of that specified in subsection ~~(k)~~ (q) without paying the compensation for overtime employment prescribed therein if the employee is so employed:

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand forty (1,040) hours during any period of twenty-six (26) consecutive weeks; or
 (2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two (52) consecutive weeks the employee shall be employed not more than two thousand two hundred forty (2,240) hours and shall be guaranteed not less than one thousand eight hundred forty (1,840) hours (or not less than forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ (q) or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed.

~~(n)~~ (t) No employer shall be considered to have violated subsection ~~(k)~~ (q) by employing any employee for a work week in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ (q) if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), (h), (i), ~~and~~ (j), (k), (l),

(m), (n), and (p) (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum work week.

(2) Provides a weekly guaranty of pay for not more than sixty (60) hours based on the rates so specified.

~~(e)~~ **(u)** No employer shall be considered to have violated subsection ~~(k)~~ **(q)** by employing any employee for a work week in excess of the maximum work week applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by the employee in the work week in excess of the maximum work week applicable to the employee under that subsection:

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half (1.5) times the bona fide piece rates applicable to the same work when performed during nonovertime hours;

(2) in the case of an employee performing two (2) or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half (1.5) times those bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half (1.5) times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder, provided that the rate so established shall be substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if the employee's average hourly earnings for the work week exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

~~(p)~~ **(v)** Extra compensation paid as described in this section shall be creditable toward overtime compensation payable pursuant to this section.

~~(e)~~ **(w)** No employer shall be considered to have violated subsection ~~(k)~~ **(q)** by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified therein, if:

(1) the regular rate of pay of the employee is in excess of one and one-half (1.5) times the minimum hourly rate applicable to the employee under section 2 of this chapter; and

(2) more than half of the employee's compensation for a representative period (not less than one (1) month) represents

1 commissions on goods or services.

2 In determining the proportion of compensation representing
3 commissions, all earnings resulting from the application of a bona fide
4 commission rate shall be considered commissions on goods or services
5 without regard to whether the computed commissions exceed the draw
6 or guarantee.

7 ~~(r)~~ **(x)** No employer engaged in the operation of a hospital or an
8 establishment which is an institution primarily engaged in the care of
9 the sick, the aged, or individuals with a mental illness or defect who
10 reside on the premises shall be considered to have violated subsection
11 ~~(k)~~ **(q)** if, pursuant to an agreement or understanding arrived at between
12 the employer and the employee before performance of the work, a work
13 period of fourteen (14) consecutive days is accepted in lieu of the work
14 week of seven (7) consecutive days for purposes of overtime
15 computation and if, for the employee's employment in excess of eight
16 (8) hours in any workday and in excess of eighty (80) hours in that
17 fourteen (14) day period, the employee receives compensation at a rate
18 not less than one and one-half (1.5) times the regular rate at which the
19 employee is employed.

20 ~~(s)~~ **(y)** No employer shall employ any employee in domestic service
21 in one (1) or more households for a work week longer than forty (40)
22 hours unless the employee receives compensation for that employment
23 in accordance with subsection ~~(k)~~ **(q)**.

24 ~~(t)~~ **(z)** In the case of an employee of an employer engaged in the
25 business of operating a street, a suburban or interurban electric railway,
26 or a local trolley or motorbus carrier (regardless of whether or not the
27 railway or carrier is public or private or operated for profit or not for
28 profit), in determining the hours of employment of such an employee
29 to which the rate prescribed by subsection ~~(k)~~ **(q)** applies, there shall
30 be excluded the hours the employee was employed in charter activities
31 by the employer if both of the following apply:

32 (1) The employee's employment in the charter activities was
33 pursuant to an agreement or understanding with the employer
34 arrived at before engaging in that employment.

35 (2) If employment in the charter activities is not part of the
36 employee's regular employment.

37 ~~(u)~~ **(aa)** Any employer may employ any employee for a period or
38 periods of not more than ten (10) hours in the aggregate in any work
39 week in excess of the maximum work week specified in subsection ~~(k)~~
40 **(q)** without paying the compensation for overtime employment
41 prescribed in subsection ~~(k)~~ **(q)**, if during that period or periods the
42 employee is receiving remedial education that:

43 (1) is provided to employees who lack a high school diploma or
44 educational attainment at the eighth grade level;

45 (2) is designed to provide reading and other basic skills at an
46 eighth grade level or below; and

- 1 (3) does not include job specific training.
2 ~~(v)~~ **(ab)** Subsection ~~(k)~~ **(q)** does not apply to an employee of a
3 motion picture theater.
4 ~~(w)~~ **(ac)** Subsection ~~(k)~~ **(q)** does not apply to an employee of a
5 seasonal amusement or recreational establishment, an organized camp,
6 or a religious or nonprofit educational conference center that is exempt
7 under the federal Fair Labor Standards Act of 1938, as amended (29
8 U.S.C. 213).".
9 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1001 as printed February 26, 2014.)

Senator STOOPS